

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT
STAFF: Joe Ernest
MEETING DATE: February 27, 2002

ITEM: 12

SUBJECT: **Cities of South San Francisco and San Bruno, San Mateo County** – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

CHRONOLGY: No previous MMPs.

There were a total of 18 violations of your NPDES permit during the period between June 1, 2000 and August 31, 2001. Seventeen of these violations are subject to a mandatory penalty for a minimum penalty of \$51,000. For the first serious violation in a six month period, the District is allowed to propose a supplemental environmental project or a pollution prevention project in lieu of \$3,000 of the penalty. There are 2 such violations, allowing for \$6,000 of supplemental environmental project or a pollution prevention project. The City has signed the waiver to a Board hearing.

RECOMMEN-
DATIONS: No action required.

File No.: 2179.7038 (JE)

Appendix: A. Complaint No. 01-150 and signed waiver.
B. Comments
C. Response to comments

Appendix A



California Regional Water Quality Control Board

San Francisco Bay Region

JE

Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov>
1515 Clay Street, Suite 1400, Oakland, California 94612
Phone (510) 622-2300 • FAX (510) 622-2460



Gray Davis
Governor

Date: FEB 05 2002
File No.: 2179.7038 (JE)

CERTIFIED MAIL NO. 70010320000236096357
RETURN RECEIPT REQUESTED

Mr. David Castagnola, Superintendent,
Cities of South San Francisco and San Bruno
North Bayside System Unit
195 Belle Air Rd.
P.O.Box 711,
South San Francisco, CA 94083-0711

RE: Mandatory Minimum Penalty for Permit Violations

Dear Mr. Castagnola,

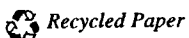
Enclosed is Complaint No. 01-150. The Complaint alleges that there were a total of 18 violations of your NPDES permit during the period between June 1, 2000 and August 31, 2001. There were two fecal coliform violations on June 1, 2000 and August 8, 2001, and four daily maximum total settleable matter violations on July 25, 2000, December 14, 2000, December 15, 2000 and August 8, 2001. There were also three monthly average total settleable matter violations in July and December 2000 and August 2001. There was one biochemical oxygen demand monthly average violation on March 31, 2001. There were two chlorine residual violations on October 25, 2000 and January 11, 2001. There were four acute toxicity violations on March 19, 2001, June 10, 2001, July 1, 2001 and August 3, 2001. There were two cyanide daily maximum violations on August 3, 2000 and October 3, 2000.

Seventeen of these violations are subject to mandatory penalties under Section 13385 of the California Water Code for a mandatory minimum penalty of \$51,000.

I plan to bring this matter to the Regional Board at its February 27, 2002 meeting. You have two options:

1. You can appear before the Board at the meeting to contest the matter. Written comments are due by February 11, 2002. At the meeting the Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the case to the Attorney General to have a Superior Court consider imposition of a penalty.

California Environmental Protection Agency



2. You can waive the right to a hearing by signing the last page of the Complaint and checking the box. By doing so, you agree to pay the liability within 30 days of signing the waiver. In addition, please fax a copy of the signed waiver to attention of Joe Ernest at (510) 622-2460 no later than February 11, 2001.

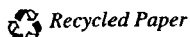
If you have any questions please call Joe Ernest at (510) 622-2456.

Sincerely,

Loretta K. Barsamian
Loretta K. Barsamian
Executive Officer

Enclosure: Complaint No. 01-150

California Environmental Protection Agency



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

COMPLAINT NO. 01-150

**MANDATORY PENALTY
IN THE MATTER OF
CITIES OF SOUTH SAN FRANCISCO AND SAN BRUNO
NORTH BAYSIDE SYSTEM UNIT
SOUTH SAN FRANCISCO AND SAN BRUNO WATER QUALITY CONTROL PLANT
SAN MATEO COUNTY**

This complaint to assess mandatory minimum penalties pursuant to Water Code Sections 13385 (h) and (i), is issued to the Cities of South San Francisco and San Bruno (hereafter Discharger) based on a finding of violations of Waste Discharge Requirements Order Nos. 97-086 and 98-117 (NPDES No. CA0038130).

The Executive Officer finds the following:

1. On July 16, 1997, the Regional Water Quality Control Board, San Francisco Bay Region, (Regional Board) adopted Waste Discharge Requirements Order No. 97-086, for the Discharger, to regulate discharges of waste from this treatment plant. This order was amended on December 16, 1998 by Order No. 98-117.
2. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for the first serious violation in any six-month period or in lieu of the penalty require the discharger to spend an equal amount for a supplemental environmental project or to develop a pollution prevention plan.
3. Water Code Section 13385(h)(2) defines a serious violation as any waste discharge of a Group I pollutant that exceeds the effluent limitation by 40 percent or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more.
4. Water Code Section 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation, excepting the first three violations, for any of the following occurrences four or more times in any six-month period:
 - a. Exceeding a waste discharge requirement effluent limitation.
 - b. Failure to file a report pursuant to Section 13260.
 - c. Filing an incomplete report pursuant to Section 13260.
 - d. Exceeding a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
5. Order No. 97-086 and Order No. 98-117 include the following effluent limitations:

B. Effluent Limitations (Order No. 97-086)***1. The effluent shall not exceed the following limits:***

- a. Settleable Matter monthly average of 0.1 ml/l-hr and a daily maximum of 0.2 ml/l-hr.*
- b. Biochemical Oxygen Demand monthly average of 30 mg/l*
- d. Total Chlorine Residual instantaneous maximum of 0.0 mg/l*

5. Acute Toxicity

Survival of organisms in undiluted effluent shall be an eleven (11) Sample median value of not less than 90%, and an eleven (11) sample 90 percentile value of not less than 70 percent.

7. Cyanide daily average concentration shall not exceed 10 ug/l.**Order No. 98-117**

Fecal Coliform density – the five day log mean shall not exceed 200 MPN/100 mL and the 90th percentile value of the last 10 samples shall not exceed 400 MPN/100 mL.

6. According to monitoring reports received, there were a total of 18 violations of your NPDES permit during the period between June 1, 2000 and August 31, 2001. There were two fecal coliform violation on June 1, 2000 and August 8, 2001, and four daily maximum total settleable matter violations on July 25, 2000, December 14, 2000, December 15, 2000, and August 8, 2001. There were also three monthly average total settleable matter violations in July and December 2000 and August 2001. There was one biochemical oxygen demand monthly average violation on March 31, 2001. There were two chlorine residual violations on October 25, 2000 and January 11, 2001. There were four acute toxicity violations on March 19, 2001, June 10, 2001, July 1, 2001 and August 3, 2001. There were two cyanide daily maximum violations on August 3, 2000 and October 3, 2000. A listing of these violations is presented in Table 1.
7. The June 1, 2000 fecal coliform 90th percentile violation is not a serious violation under Section 13385 (h)(1). The violation is not subject to mandatory penalty under Section 13385 (i) as it is the second violation within the preceding 180 days. The August 8, 2001 fecal coliform 90th percentile violation is not a serious violation under Section 13385 (h)(1). The violation is subject to mandatory penalty under Section 13385 (i) as there have been four or more (six) violations within the preceding 180 days. The mandatory minimum penalty for each violation under Section 13385 (i) is \$3,000.
8. The seven settleable matter violations are all serious because settleable matter is a Group I pollutant and the instantaneous and the monthly average violations exceed the effluent limitation by more than 40%. The two cyanide violations are likewise serious violations because cyanide is a Group II pollutant and the violation exceeds the effluent limitation by more than 20%. The two residual chlorine violations are also serious violations because chlorine is a Group II pollutant and any detection exceeds the zero effluent

limitation by more than 20%. All serious violations are subject to a mandatory minimum \$3000 penalty under Section 13385 (h) (1).

9. The four acute toxicity and one biochemical oxygen demand violations are each subject to a mandatory minimum penalty since there have been four or more violations in a 6 month period. The mandatory minimum penalty for each violation under Section 13385 (i) is \$3,000.
10. Each of the 17 violations in findings 7, 8 and 9 is subject to a \$3,000 minimum mandatory penalty, for a total penalty of \$45,000. The violations and associated fines are summarized in Table 1.
11. In lieu of the \$3,000 penalty for the first serious violation in the preceding 180 days the discharger may be permitted to complete a pollution prevention plan (PPP) or conduct a supplemental environmental project (SEP) approved by the Executive Officer. The violations on July 25, 2000 and July 8, 2001 are each the first serious violation in the respective preceding 180 days and are therefore eligible for PPP or SEP substitution. With the Executive Officer's approval the two projects may be combined or the funds applied towards an existing approved SEP or PPP.

THE CITIES OF SOUTH SAN FRANCISCO AND SAN BRUNO ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed a minimum mandatory penalty in the amount of \$ 51,000.
2. A hearing shall be held by the Regional Board on February 27, 2002 unless the Discharger agrees to waive the hearing and pay the mandatory minimum penalty of \$51,000 in full, or pay \$45,000 and propose a pollution prevention plan or a supplemental environmental project equivalent to \$6,000.
3. You can waive the right to a hearing by signing the last page of the Complaint and checking the appropriate box. By doing so, you agree to pay the liability within 30 days of signing the waiver.
4. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed penalty, or whether to refer the matter to the Attorney General to have a Superior Court consider imposition of a penalty.

Loretta K. Barsamian

Loretta K. Barsamian
Executive Officer

February 4, 2002

Date

MMP 01-150

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WAIVER

- ☒ By checking the box I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. 01-150 and to remit payment for the civil liability imposed to the State Water Resources Control Board at 1515 Clay Street, Oakland CA 94612. I understand that I am giving up my right to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed. I further agree to remit payment for the civil liability imposed within 30 days after signing this waiver.
- ☐ By checking the box I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. 01-150 and to complete a pollution prevention plan or conduct a supplemental environmental project in lieu of the civil liability imposed for the first serious violation, subject to approval by the Executive Officer. If the pollution prevention plan or supplemental environmental project is not acceptable to the Executive Officer, I agree to pay the civil liability within 30 days of a letter from the Executive Officer denying the approval of the proposed project. I understand that I am giving up my right to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed. I further agree to complete a pollution prevention plan or conduct a supplemental environmental project approved by the Executive Officer within a time schedule set by the Executive Officer.

DAVID CASTAGNOLA David Castagnola
Name (print) Signature

2-14-02 Superintendent
Date Title/Organization
South San Francisco -
San Bruno Water Quality
Control Plant

Appendix B



OFFICE OF THE SUPERINTENDENT OF
WATER QUALITY CONTROL

(650) 877-8555

FAX (650) 829-3855

February 8, 2002

**Ms. Loretta K. Barsamian
Executive Officer
Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612**

**RE: Notice of Mandatory Minimum Penalty for Permit Violations
File No.: 2179.7038 (JE)**

Dear Ms. Barsamian:

On February 8, 2002, we received your notice of the penalties for permit violations. Your letter states that we can appear before the Board at its February 27, 2002, meeting in order to contest the matter and that written comments are due by February 11, 2002.

Please except this facsimile letter as our written comments. The City plans to have its Director of Public Works, Mr. John Gibbs, and its Superintendent of Water Quality Control, appear before the Board in order to contest the penalties.

Although we are not contesting the violations we belief that we qualify for the exemption from penalties cited in section 2(j)(2A) of SB 2165, which amended SB 709.

This section implies that the penalties do not apply where the waste discharge is in compliance with either a cease and desist order or a time schedule order, if all of the following requirements are met:

Water Quality Control Plant - 195 Belle Air Road - 94080

2.

- (i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000 [our CDO with a time schedule was issued August 20, 1997, Order No. 97-104], specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i) [the conditions for mandatory penalties], and the date by which compliance is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress toward compliance will be measured and the date by which the discharger will be in compliance with each interim requirement.

[Our CDO has three Compliance Dates:

	<u>Compliance Date</u>	<u>Completed</u>
1. Complete design of the proposed WQCP improvement projects.	March 1, 1998	May 1998
2. Begin construction of the proposed WQCP improvements.	August 1, 1998	January 1999
3. Complete all the WQCP improvement Projects and achieve full compliance with the effluent limitations of the NPDES Permit.	March 1, 2001	August 2001

The delays in getting started and completing construction were unanticipated and primarily due to the time it took to acquire funding from the SRF Loan Program, debarment of the electrical subcontractor by the State Division of Labor Standards Enforcement, the finding during excavation at the construction site of asbestos containing rock and fuel contaminated soil and groundwater from leaks from the nearby Shell Oil Company fuel storage facility, both of which required special handling and removal.

We believe we handled these delays expeditiously and complied with the essence of the CDO.

- (ii) The discharger has prepared and is implementing in a timely and proper manner or is required by the regional board to prepare and implement, a pollution prevention plan that meets the requirements of Section 13263.3.

We have implemented our pollution prevention program since 1992.

- (iii) The discharger demonstrates that it has carried out all reasonable and immediately feasible actions to reduce noncompliance with the waste discharge requirements applicable to the waste discharge and the executive officer of the regional board concurs with the demonstration.

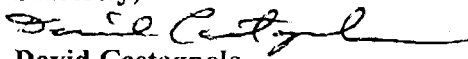
3.

The City took the following "reasonable and immediately feasible actions" to reduce noncompliance in accordance with recommendations of interim improvements made in an October 1995 Capacity Study Final Report prepared for the City by John Carollo Engineers.

- Replaced an inefficient aeration system with fine bubble diffusers, around June 1996, at an expense of about \$750,000.
- Began using chemicals to enhance performance of an inefficient primary treatment system, around January 1996, at an expense of about \$120,000 per year.
- Replaced an inefficient chlorine gas disinfection system with a hypochlorite system, around July 1997, at an expense of about \$800,000.
- Imposed pretreatment requirements for a paint manufacture who was contributing high solids and oxygen demand to the WQCP, around 1996.

We hope you agree with our comments. If you any questions please call me at (650) 829-3844.

Sincerely,



David Castagnola
Superintendent

Appendix C

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF RESPONSE TO WRITTEN COMMENTS
ON MANDATORY MINIMUM PENALTY FOR:

CITIES OF SOUTH SAN FRANCISCO AND SAN BRUNO,
SAN MATEO COUNTY

COMPLAINT NO. 01-150

On February 8, 2002, the City submitted written comments on this matter. In its comment letter, the City states "Although we are not contesting the violations we believe that we qualify for the exemption from penalties cited in Section 2(j) (2A) of SB 2165, which amended SB 709."

SB 2165 permits exemptions from mandatory minimum penalties for dischargers under a Cease and Desist Order, if all conditions including the following are met:

- a) The CDO must specify actions to correct the violations that would otherwise be subject to mandatory penalties
- b) The discharger must be implementing a Pollution Prevention Plan
- c) The discharger must be in compliance with a CDO issued between January 1, 1995 and July 1, 2000.

Staff review shows that only one violation would be eligible for consideration (having occurred between Jan 1, 2001 when SB 2165 took effect and March 1, 2001, the final compliance date of the Cease and Desist Order (97-104) in effect at the time. Compliance dates for design completion and commencement of construction were also not met. The exemption does not apply as the discharger did not meet the requirements of the CDO.